

OPINION
62-34

August 6, 1962 (OPINION)

BOARD OF DRAIN COMMISSIONERS

RE: Authority to Issue Warrants

This is in reply to your letter of August 1, 1962, in which you say that the Board of Drain Commissioners of Sargent County has been informed that the board will be presented with a petition signed by more than fifty-one percent of the affected landowners requesting the board to clean out and repair a drain, that no money has been accumulated in the drainage fund and that it is estimated that the maximum levy authorized by law, extended over a period of five years, will be needed to cover the cost of cleaning and repairing the entire drain.

You request our opinion as to whether the Board of Drain Commissioners may issue warrants in anticipation of collection of assessments after having made a levy this fall, and then proceed immediately to clean out a portion of the drain. Our answer to this question is yes. For when the drain board has taken action to make the assessment of benefits the clerk of the board at once certifies to the county auditor the action of the board and it then becomes the function of the auditor to spread the levy in conformity with the board's action. The board may issue warrants in anticipation of the amount the levy will produce and proceed to clean as much of the drain as such sums will cover.

Since the Board of Drain Commissioners has not accumulated the fund authorized in section 61-21-46, the amount which will be currently available through the issuance of warrants will be limited to the amount of money the levy will produce this year. And in order to accumulate the fund authorized by section 61-21-46, cleaning out the drain in question will, of course, be delayed.

It is therefore the opinion of this office that if and when the Board of Drain Commissioners shall by resolution determine that the maximum levy for a year, plus the amount that may be accumulated, would not be sufficient to cover the cost of cleaning the drain, that the board will be authorized, if presented with a petition signed by sixty-one percent of the affected landowners to clean and repair the entire drain.

LESLIE R. BURGUM

Attorney General